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Docket Number (Optional)

99,294

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on

November 14, 2005

Signature

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Application Number

09/311,617

Filed

5/13/99

First Named Inventor

Brent Townshend

Art Unit

2654

Examiner

Angela A. Armstrong

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

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applicant/inventor.

☐assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☐attorney or agent of record.
Registration number☒

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 53,564

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NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

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*Total of forms are submitted.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(MBHB Case No. 99,294)

In the Application of:

Brent Townshend

Serial No.: 09/311,617

Filed: May 13, 1999

For: Automated Language Assessment Using
Speech Recognition Modeling

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) Examiner: Angela A. Armstrong
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) Group Art Unit: 2654
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REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the Office Action mailed May 20, 2005 because the examiner, when responding the applicant's arguments, made an error in law and an error in fact. While the Office Action mailed May 20, 2005 is non-final, applicant's claims have been twice rejected.

1. The Claimed Invention

Applicant's claims are directed towards a system and method for measuring an ability of a subject that accounts for the problems associated with speech recognition systems. Each independent claim recites, in one way or another, a measurement that accounts for a task item-dependent operating characteristic of a speech recognition system. As a result, the subject's ability can be more accurately assessed because the problems associated with the speech recognition

system incorrectly interpreting items in the subject's response can be normalized or otherwise taken into account.

2. Status of the Claims

Claims 1-8, 10-12, and 14-17 are currently pending. Claims 1, 7, 8, 14, 16, and 17 are independent claims. Claims 1-8, 10-12, and 14-17 stand rejected on grounds of obviousness over a combination of U.S. Patent No. 5,303,327 ("Sturner"), U.S. Patent No. 6,253,181 ("Junqua"), and U.S. Patent No. 5,059,127 ("Lewis").

3. Clear Legal Deficiency of Rejections

In response to applicant's argument that Sturner, Junqua, and Lewis are all silent with respect to item-dependent characteristics of a speech recognition system, the examiner states that "one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." (Office Action, page 5.) The Examiner cites two cases for support of this legal conclusion. *Id.* However, neither of these cases have relevance here.

In *Keller*, the applicant argued that "the teachings of Walsh cannot properly be combined with those of either Keller or Berkovits because Walsh does not relate to a cardiac pacer." *In re Keller*, 642 F.2d 413, 424 (CCPA, 1981). The applicant's invention was "to use a digital timing circuit in a cardiac pacer." *Id.* at 425. However, "Keller and Berkovits disclose heart stimulators that use R-C type timing circuits" and "Walsh teaches the use of digital type timing circuits in place of R-C type timing circuits in conventional heart stimulators." *Id.* The court found that it was proper to combine these references as Walsh relates to an analogous art. *Id.* at 424-425. Notably, the applicant did not argue that the references, when combined, would still be missing an element of the claims.

Similarly, the applicant in *Merck* contended that “there was no motivation in the prior art to arrive at appellant’s invention.” *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Moreover, the court held that “[n]onobviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references” in response to applicant’s argument that one of nine references used to make the obviousness rejection teaches away from the applicant’s invention. *Id.* As in *Keller*, the applicant in *Merck* did not argue that the references, when combined, would still be missing an element of the claims.

In the present case, applicant has argued in six responses to Office Actions and in two Examiner Interviews (one in-person) that none of the references cited have shown or suggested a scoring computation that accounts for inaccuracies of a speech recognition system itself. In order to establish a *prima facie* case of obviousness of a claim over a combination of references, the examiner must establish that the combination teaches or suggests all of the claim limitations. MPEP § 2143. Thus, applicant believes that the examiner has failed to establish the requisite *prima facie* case of obviousness.

The examiner admits that Sturner fails to teach “that the subject score accounts for inaccuracies, potential recognition errors, or item-dependent operational characteristics of a speech recognition system.” (Office Action, page 3.) Lewis is silent with respect to speech recognition systems, and thus silent with respect to the operating characteristics of a speech recognition system. Thus, the only issue is whether Junqua shows or suggests a scoring computation that accounts for inaccuracies of a speech recognition system.

Using the examiner’s characterization, “Junqua discloses a speech recognition and teaching apparatus able to rapidly adapt to difficult speech of children and foreign speakers.” (Office Action, page 3.) As described by the examiner, Junqua “uses a confidence measurement system that

provides a quantitative measure of how reliable each utterance is.” *Id.* As further described by the examiner, Junqua’s system increases “the recognizer’s chance of having a good performance, without adapting to incorrect recognitions.” *Id.* The examiner’s own characterization of Junqua highlights why Junqua does not show or suggest a scoring computation as claimed.

First, Junqua discloses adapting a speech recognition system to a user, while applicant’s claimed invention makes no changes to the speech recognition system. Rather the claims recite a scoring model that depends on the expected operating characteristics of the speech recognition system. Second, Junqua is concerned with overcoming a problem related to an input of the system (i.e., difficult speech of users), while applicant’s claimed invention is concerned with overcoming a problem related to an output of the system (i.e., providing a subject score that depends on the inaccuracy of the speech recognition system). Third, Junqua provides a quantitative measure regarding the reliability of the utterance, while applicant’s claimed invention provides a subject score that accounts for the operating characteristics of the speech recognition system. Fourth, Junqua’s invention results in an improvement to the speech recognition system, while applicant’s claimed invention results in an improvement to a subject score by providing a score that takes into account the operating characteristics of the speech recognition system. For at least these reasons, applicant believes that Junqua does not show or suggest a scoring computation model that depends upon an expected task item-dependent operating characteristic of a speech recognition system.

4. Clear Factual Deficiency of Rejections

The Examiner noted that “the features upon which applicant relies (i.e., a scoring computation model that depends upon an expected task-item dependent operating characteristic of the speech recognition system) are not recited in the rejected claim(s) 8, 14, 16, and 17.” (Office Action, page

5.) However, each of these independent claims includes a claim element with respect to a measurement that accounts for a task item-dependent operating characteristic of a speech recognition system. The elements are identified as follows:

- Claim 8, lines 4-5: wherein the performance measurement comprises a measure of a task item-dependent operating characteristic of the automatic device;
- Claim 14, lines 4-6: wherein the difficulty value is based upon the task item and upon a performance measure associated with a task item-dependent operating characteristic of an automated device in assessing performance of the task;
- Claim 16, lines 6-7: means for reducing the graded responses to a set of task item difficulties, said task item difficulties normalizing the task items by accounting for non-random errors by the automatic grader; and
- Claim 17, lines 5-8: said task item difficulties including a measurement of a task item-dependent operating characteristic associated with the act of automatically grading the set of responses for purposes of normalizing the task items to provide an accurate assessment.

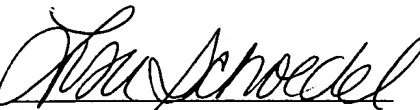
While the wording of this element in claims 8, 14, 16, and 17 may not be identical to the wording found in claims 1 and 7, the “feature” noted by the examiner is found in each of the independent claims.

5. Conclusion

For the foregoing reasons, applicant submits that all of the pending claims should be allowed.

Respectfully submitted,

Date: November 14, 2005

By: 
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